IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.122 OF 2003

1. Smt. Deepika Durgaram Parvar,
widow of Durgaram Bhanudas Parvar,
and daughter of late Babal Parvar,
major, housewife

2. Kumari Asha Durgaram Parvar,
daughter of late Durgaram Parvar,
minor of 1 year old,
through her natural guardian/mother
Smt. Deepika Durgaram Parvar,
the Claimant No.1,

both are the residents of H.No.
1358, Anandwadi, Shiroda,
Ponda, Goa ... APPELLANTS

VERSUS

1. Shri Joaquim Alex P. Fernandes,
son of Pascoal Fernandes,
major, married, driver by
profession, resident of
H.No.49(1),
Assolda,Quepem,Goa;

2. Shri Sudin M. Verenkar,
son of M. Verenkar,
major, married, businessman,
resident of H.No.34,
Chandor, Salcete,Goa;

3. The Oriental Insurance Co.Ltd.,
Margao Branch,
IInd floor, David House,
Margao, Salcete, Goa ... RESPONDENTS

Mr. Vallabh D. Pangam, Advocate under Legal Aid Scheme, for the Appellants.

Mr. E. Afonso, Advocate for Respondents Nos.1 to 3.

CORAM : F.I. REBELLO,J.

DATED : JULY 10, 2003.

ORAL JUDGMENT

Admit. Heard forthwith.

2. As the matter pertains to a motor accident claim which was rejected, Record and Proceedings were called with a view to dispose of the matter at admission stage itself. Record and Proceedings are before this Court.

3. The Claims Tribunal, while answering Issues Nos.1 and 4, recorded a finding that the Appellants had been unable to prove that the accident occurred due to rash and negligent driving of the Respondent No.1. The Claims Tribunal noted that the Respondents admitted in their Written Statement that a rickshaw had dashed the jeep. The defence raised by the Respondent No.1 before the Claims Tribunal was that the rickshaw was coming in a zigzag manner and by driving in a rash and negligent manner and seeing that he stopped the vehicle. The rickshaw came and dashed the vehicle and thus the accident arose.

4. The Investigation Officer has been examined as C.W.3. Through him the panchanama of the accident has come on record. If the panchanama

is observed, which is at Exhibit 35, the location of the jeep on its front side is 0.60 metres from the end portion of the tarred road and on the back side it is 0.90 metres. The distance between the jeep and the rickshaw is 4.80 metres. The rickshaw is seen further outside the kuchcha portion of the tarred road. A perusal of the said panchanama would indicate that the rickshaw was on its wrong side whereas the jeep was on the right side. The distance between the tarred portion of the road on its right side was 3.90 metres at the back side and 3.60 metres on the front side. In other words, the rickshaw could have traversed on its own if it had not come on the wrong side.

5. On behalf of the Appellant, their learned Counsel contends that Exhibit 35 should not be considered as the panchanama was drawn not on the same day but on the next day. He further contends that the doctrine of **res ipsa loquitur** should be applied and placed reliance on the judgment of a learned Single Judge of this Court in B**ishansing Thakursing v. Nasira Kadar Shaikh and others** [2003(1) Mah. L.J. 69].

6. The doctrine of **res ipsa loquitur** could be attracted to show the position and

thereafter draw an inference that the accident has happened in the manner as shown. In the instant case the doctrine if applied, it is clear that the rickshaw is on the wrong side. In other words, it was the negligence of the rickshaw and not the jeep. It is then contended that the said panchanama should not be relied upon as the panchanama was not drawn on the very same day. Even if that be so, in the evidence nothing has come to show that the panchanama was not correctly drawn or that the position of the vehicles was wrongly shown. In the absence of leading any evidence to the contrary, the panchanama of the scene of the offence will have to be accepted. If so accepted, it is not possible to upset the finding recorded by the learned Tribunal.

7. In the light of that, there is no substance in the Appeal and the Appeal is accordingly rejected.

F.I. REBELLO,J.

ac.